

Supreme Court, U.S.  
FILED

JUN 21 1990

JOSEPH F. SPANIOLO, JR.  
CLERK

No. 89 - 1831

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 1989

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WALTER A. WALKER, JR.

Petitioner

v.

CONSUMERS POWER COMPANY

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SUPPLEMENTARY APPENDIX

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June 1990



## SUPPLEMENTARY APPENDIX

The order by the District Court  
granting Defendant's Motion to Dismiss  
Plaintiff's State Law Claim.

The Order Dismissing Plaintiff's  
State Law Claim by the District Court.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED  
SEP 7 8 58 AM '88  
CLERK  
U.S. DIST. COURT  
EAST.DIST.MICH

WALTER A. WALKER, JR.,

Plaintiff,

vs.

C.A. 80-CV-60037-AA

CONSUMERS POWER COMPANY,

HON. GEORGE La PLATA

Defendant.

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ORDER GRANTING DEFENDANT'S MOTION  
TO DISMISS PLAINTIFF'S STATE LAW CLAIM

Plaintiff, Walter A. Walker, filed this action against Defendant, Consumers Power Company, alleging that he was discharged from his job as a senior engineer in the Nuclear Fuel Supply Department without just cause contrary to his contractual rights as recognized in Toussaint v. Blue Cross and Blue Shield of Michigan.



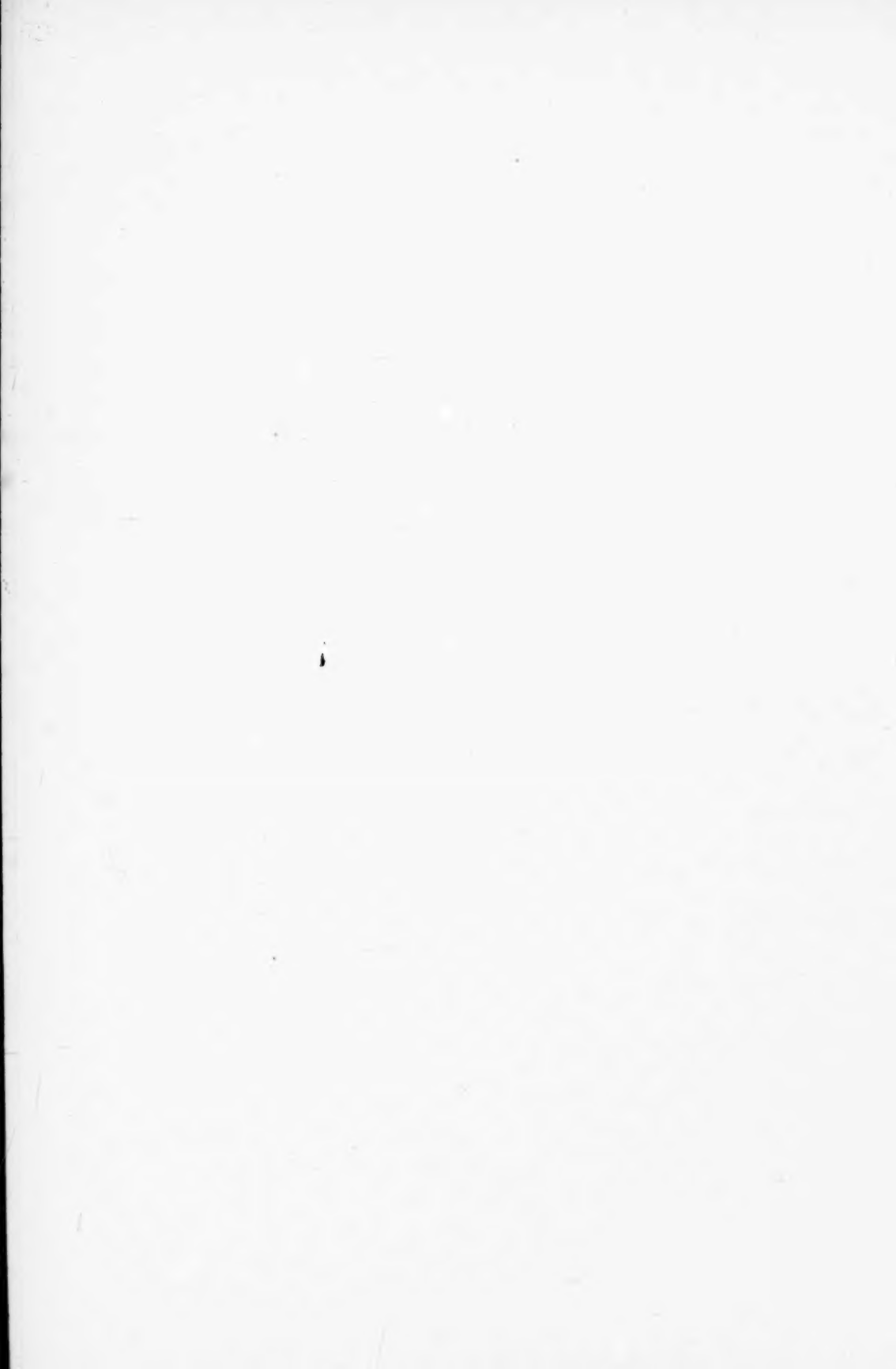
292 N.W.2d 880 (1980). The case finally proceeded to trial in federal district court on three separate counts. Count I charged the Defendant with having discriminated against Plaintiff based on race in violation of 42 U.S.C. §1981 by depriving him of the full and equal benefit of all laws and proceedings as enjoyed by white citizens. Counts 2 and 3 alleged pendent claims under Michigan law; Count 2 alleged that Defendant breached its employment contract with Plaintiff and Count 3 alleged a tort claim for fraudulent misrepresentation. Prior to trial, the court granted a motion for a directed verdict on Count 3 for fraudulent misrepresentation. The jury returned a verdict in favor of Defendant on Count 1, the claim under 42 U.S.C. §1981. Plaintiff was granted a verdict in the amount of \$1,194,600 on Count 2,





the breach of contract claim. The Defendant appealed the verdict on the breach of contract claim. No cross-appeal was taken by the Plaintiff with respect to Counts 1 or 3. On appeal, the Sixth Circuit Court of Appeals reversed the judgment entered by the district court and remanded for a new trial, limited to the issue of whether Defendant breached an employment contract with Plaintiff by discharging him without just cause. Walter v. Consumers Power Co, 824 F.2d 499 (6th Cir. 1987), cert. denied 108 S.Ct. 711 (1988). The case is currently before this Court on Defendant's Motion to Dismiss Plaintiff's State Claim.

The only remaining issue to be tried in this case is whether under Michigan law Defendant breached an employment contract with Plaintiff. United Mine Workers



v. Gibbs, 86 S.Ct. 1130 (1966) establishes that although a federal court may have the power to decide state law claims, that power should not be exercised in every case in which it exists. In Gibbs the Supreme Court stated:

It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right. Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them, ...Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Gibbs at 1139 (footnotes and citations omitted).

In the present case the breach of employment contract issue must be retried whether it is retried in state or federal



court. Absent considerations of judicial economy, convenience and fairness to the litigants, the state forum should decide issues of state law.

This court's dismissal of the claim should not pose a problem of the Plaintiff's claim being barred by the Michigan statutes of limitations. See M.C.L.A. Section 600.5856; Ralph Shrader, Inc. v. Ecclestone Chemical Company, 177 N.W.2d 241 (1970). To assure that Plaintiff may avail itself of the local forum, this Court GRANTS Defendant's Motion to Dismiss Plaintiff's State Claim without prejudice; however, the Court shall not enter an Order of Dismissal until thirty days from the date of this Order so that the Plaintiff shall have adequate time to file his claim in the appropriate state forum; further, if the statute of

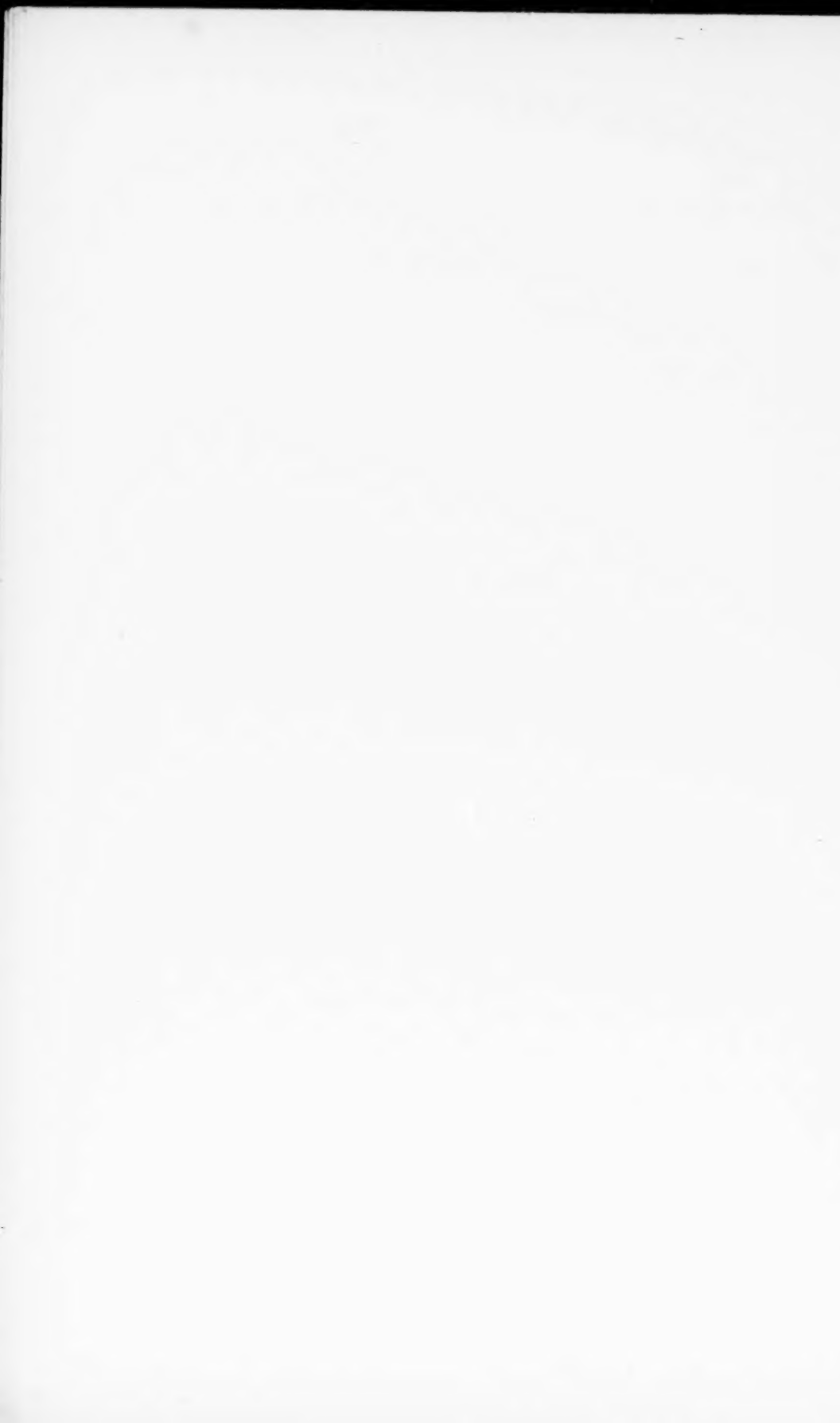


limitations has run on Plaintiff's breach of contract claim, Defendant is ORDERED to file a record of waiver of any applicable statute of limitations defenses in the appropriate state court.

GEORGE La PLATA

U. S. District Judge

September 6, 1988  
Ann Arbor, MI





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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U.S.DIST.COURT  
EAST.DIST.MICH.

WALTER A. WALKER, JR.,

Plaintiff,

vs.

C.A. No. 80-CV-60037-AA

CONSUMERS POWER COMPANY

HON. GEORGE La PLATA  
Defendant.

ORDER DISMISSING PLAINTIFF'S STATE LAW CLAIM

Pursuant to this Court's Order dated  
September 6, 1988, Plaintiff's action is  
hereby DISMISSED without prejudice.

October 6, 1988  
Ann Arbor, MI

GEORGE La PLATA  
U. S. District Judge